

May 5, 2003

Marlene Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

**Re: In the matter of Rules and Regulations Implementing the Telephone
Consumer Protection Act of 1991, Further Notice of Proposed
Rulemaking
FCC 03-62
CG Docket No. 02-278**

Dear Secretary Dortch:

The New Jersey Division of the Ratepayer Advocate ("Ratepayer Advocate") submits the following comments in regard to the Notice of Proposed Rulemaking ("NPRM") in the above captioned matter issued by the Federal Communications Commission ("FCC") on March 25, 2003.¹ The NPRM seeks comments on how the FCC can maximize consistency between its regulations under the Telephone Consumer Protection Act of 1991 ("TCPA"), the Telemarketing Sales Rule adopted by the Federal Trade Commission's ("FTC"), and the recently enacted Do Not Call Implementation Act ("Act"). Specifically, the NPRM seeks comments on how the goals and principles of the Act should be implemented, and how to harmonize the requirements of Do-Not-Call with the mandates of the TCPA. The Ratepayer Advocate submits that:

1. the Do-Not-Call registry should not preempt state Do Not Call registry laws; instead, state and federal authorities should be able to share registry information and determine how best to prosecute any alleged infractions;
2. consumers should be able to register once by contacting either the FCC, the FTC or the state's Do Not Call registry (the registries would share databases), and file a complaint with any of those agencies;

¹ *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Further Notice of Proposed Rulemaking*, FCC 03-62, CG Docket No. 02-278 (Released March 25, 2003).

3. there should be consumer education that registration on the FTC's national Do Not Call registry is free and that Congress has appropriated funds for the implementation of the national Do Not Call registry.

Accordingly, the Ratepayer Advocate submits that it is crucial for the FCC and the FTC to work in concert with state jurisdictions that have established an in-state registry, and for state authorities to subscribe to a cooperative venture with the federal agencies in order to provide consumers with an option to subscribe to local and national Do Not Call registries at the same time.

The establishment of a national Do-Not-Call registry provides a long awaited and necessary protection to telecommunications consumers. Initially, the TCPA required that the individual persons or entities making solicitations maintain a record of a caller's request not to receive future telephonic solicitations.² The FTC Telemarketing Sales Rule, in contrast, was directed at the prevention of consumer fraud and abuse.³ It established and prescribed rules for telephone solicitors, in placing outbound calls to a person whose telephone number is on the Do-Not-Call registry.⁴ On a local level, several states have established their individual Do-Not-Call registry for the protection of their citizens from unwanted telephonic communications by soliciting entities. The Act highlights the need to harmonize these governmental efforts.⁵

Currently, several states have established Do-Not-Call database systems.⁶ The popularity of these state based systems evidence the continuing need for a process that permits individuals to maintain their privacy from intrusive telephonic solicitations.⁷ Whereas some state Do-Not-Call laws provide adequate power to prosecute persons placing calls from outside their state, others do not. Hence, the national registry affords the advantage of providing consumers with different avenues of redress and providing telemarketers the ability to access the Do-Not-Call lists of several states from one source, if the information were shared between state and federal authorities. In view of the

² See, 47 C.F.R. § 64.1200 (e)(vi)

³ See, Telemarketing and Consumer Fraud and Abuse Prevention Act, 16 C.F.R. § 310 (effective January 29, 2003)

⁴ *Id.* at § 310.4 (b)(iii)(B).

⁵ Do-Not-Call Implementation Act, Pub. L. No. 108-10 (2003).

⁶ Previous comments to the FCC filed by the National Association of Attorneys General (NAAG) in *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90 (filed December 9, 2002) fn. 3, report that the states of Alabama, Arkansas, Colorado, Connecticut, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Maine, Missouri, New York, Oregon, Pennsylvania, Tennessee, Texas, Vermont, and Wyoming had operational do-not-call databases and that California, Illinois, Louisiana, Massachusetts, Minnesota, Oklahoma, and Wisconsin were in the process of implementing their own database systems. In addition, several other states including New Jersey were considering legislation that propose do-not-call database systems. In New Jersey, Assembly Bill No. A-727 has passed in the Senate and has been returned to the Assembly for concurrence with Senate amendments.

⁷ *Id.* at fn. 5.

enforcement measures provide by both the states and the federal agencies, and given that the states are well positioned to receive and act on complaints because they are closer to the consumer and are aware of trends in their areas, if Do-Not-Call databases were shared then the fullest protection to consumers could be provided. The state's right to prosecute, however, should not be impaired merely because of the national registry nor due to the availability of federal prosecutions.⁸ There should be shared jurisdiction.

The FTC's national Do-Not-Call registry has been funded by the 2003 omnibus budget and the registry will be open for registrations on July 1, 2003.⁹ The Act, however, requires the FCC to report to the House and Senate on several aspects of the national registry operations, including the number of consumers who have placed their telephone numbers on the registry and the number of persons paying fees for access to the registry and the amount of such fees.¹⁰ The Ratepayer Advocate submits that to the extent there are appropriations currently allocated to cover the costs of the registry operations and administration, the rules should provide that there is no cost to consumers to register. As violations are prosecuted, and fines collected, and other fees are collected, these proceeds should be remitted to the national registry fund for its further use in operations, administration and prosecution.

Respectfully Submitted,

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RATEPAYER ADVOCATE

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⁸ The National Association of Regulatory Utility Commissioners (NARUC) has also endorsed this position. See, Comments, *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90 (filed November 22, 2002).

⁹ See, NPRM, fn. 18, referencing the Consolidated Appropriations Resolution, 2003, H.J. Res. 2, Pub. L. No. 108-07 (2003).

¹⁰ See, Do-Not-Call Act Sections 4(b)(2) and (3).